

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LYNN LYNN

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Appeal No. 1999-1590  
Application No. 08/803,624

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ON BRIEF

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Before HAIRSTON, FLEMING, and GROSS, Administrative Patent Judges.  
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, which are all of the claims pending in this application.

Appellant's invention relates to a watch for monitoring the menstrual cycle of a woman. The watch displays various dates including the start date of the previous month's cycle, the projected start date of the next month's cycle, the date of ovulation, and the current date, along with the number of days since the start of last month's cycle. The information is automatically updated and stored in a memory. Claim 1 is illustrative of the claimed invention, and it reads as follows:

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1. A device for monitoring the menstrual cycle of a woman, said device comprising:

a housing;

memory means for storing associated dates of the woman's menstrual cycle;

a display disposed on said housing;

display drive means responsive to said memory means for displaying said associated dates of the woman's menstrual cycle on said display;

means for automatically updating said associated dates of the woman's menstrual cycle on the basis of menstrual data stored in said memory means and the current date; and

means for adjusting said menstrual data so as to reflect the woman's particular menstrual cycle.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Desjacques	4,367,527	Jan. 04, 1983
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Claims 1 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Desjacques.

Claims 1 through 20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,606,535.

Reference is made to the Examiner's Answer (Paper No. 14, mailed January 28, 1999) for the examiner's complete reasoning in support of the rejections, and to appellant's Brief (Paper Nos. 13 and 15, filed December 21, 1998 and January 15, 1999, respectively) for appellant's arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 1 through 20, and affirm the obviousness-type double patenting rejection of claims 1 through 20.

Independent claim 1 recites, in pertinent part, means for displaying "associated dates of the woman's menstrual cycle." Desjacques, in Figure 9, shows displaying the current date, but no other dates. Desjacques is concerned with calculating on a particular day the probability of getting pregnant following an act of sexual intercourse. Although the calculations require information about the woman's menstrual cycle, such as the beginning date of the last cycle and the average length of the cycle, as pointed out by appellant (Brief, page 6), Desjacques has no reason to display any information other than the probability of becoming pregnant.

The examiner asserts (Answer, page 3) that "[i]t would have been obvious . . . to adapt the reference to include calculating and displaying differing data related to the menstrual cycle in order to provide information on the varying dates. . . . What data is calculated and the relationship to the current date is an

engineering choice." Appellant asserts (Brief, pages 8-9) that the examiner's rejection is based on hindsight acquired from appellant's disclosure. We agree. Without some teaching or suggestion to display more than the probability of becoming pregnant, we decline to find that such a display would have been obvious. The Court has held that "[w]ith respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense." *In re Zurko*, No. 96-1258 (Fed. Cir. August 2, 2001). Thus, we cannot sustain the obviousness rejection of claim 1 nor of its dependents, claims 2 through 15.

Claim 16 recites the specific dates to be displayed -- the dates of a woman's last and next menstrual cycle. As explained above, Desjacques has no reason to display any information other than the probability of becoming pregnant, and the examiner has provided no teachings or suggestions from the prior art as to why it would have been obvious to include such a display. Therefore, we cannot sustain the obviousness rejection of claim 16 nor of its dependents, claims 17 through 20.

As appellant has not argued the obviousness-type double patenting rejection, we will sustain the rejection *pro forma*.

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Therefore, the rejection of claims 1 through 20 for obviousness-type double patenting is affirmed.

CONCLUSION

The decision of the examiner rejecting claims 1 through 20 under 35 U.S.C. § 103 is reversed. The decision of the examiner rejecting claims 1 through 20 under obviousness-type double patenting is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

APG:clm

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